

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D-2912 of 2016**

*Zafar Akbar*

*V/s*

*Federation of Pakistan & 04 others*

1. For hearing of CMA No.7715/2017.
2. For hearing of CMA No.13854/2016.
3. For hearing of CMA No.13855/2016.
4. For hearing of main case.

**Date of hearing: - 17.04.2019**

M/s. Jaffer Raza & Zakir Leghari, advocates for the Petitioner.

Mr. Muhammad Asghar Malik, Advocate for Respondents No. 2 to 4.

Mr. Muhammad Nishat Warsi, DAG.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:** - Through the instant petition, the Petitioner seeks declaration to the effect that the appointment of Respondent No.5 by way of promotion in Group-9 to the post of `Controller Script`, Program Department is in violation of Statutory Rules of Pakistan Television Corporation. Petitioner seeks further declaration to the effect that the Respondent No.5 is / was not qualified to be inducted in the Program Department by changing his cadre from `Diesel Mechanic` to `Controller Script` in Group-9. Per Petitioner, the aforesaid appointment of the Respondent No.5 is in violation of dicta laid down by the Hon`ble Supreme Court in the case of *Ali Azhar Khan Baloch & others vs. Province of Sindh & others* [2015 SCMR 456].

Brief facts of the case as per averments of the parties are that the Petitioner had joined Pakistan Television Corporation ["PTV"] in the year 1997 in Group-V as Producer (Script) in

Program Department. Petitioner has submitted that he was promoted from time to time and finally in Group-VIII as a Script Editor with effect from 31.12.2009 vide Office Order dated 29.3.2010 and thereafter no promotion of the Petitioner was made by the Respondent-PTV on the premise that the Respondent No.5 occupied the post of Petitioner. He added that Respondent No.5 was appointed as Diesel Mechanic in Group-I, thereafter his post was re-designated and appointed as Controller Script Program Department in Group-9 by the outgoing Managing Director of the Respondent No.2 vide Office Order dated 26.2.2016 on probation of [06] six months in an arbitrary manner and in violation of Statutory Rules of Respondent-PTV promulgated through SRO No. 639(1)/78 dated 24.5.1978 published in the Gazette of Pakistan. Petitioner being aggrieved by and dissatisfied with the impugned order dated 26.02.2016 passed by the Respondent-PTV has filed the instant Petition on 18.05.2016.

We enquired from the learned counsel for the Petitioner as to how this Petition is maintainable when he was superseded by the Selection Board vide Minutes of the Meeting of Selection Board due to his average ACRs?

Mr. Jaffer Raza, learned counsel for the Petitioner, in reply to the query, has submitted that the purported allegations of rating of average ACRs, which were never communicated to him. He referred to the Circular dated 30.10.1998 issued by Respondent-PTV and argued that the Management of PTV had decided that the concerned employee should be informed about the rating of below average/average of performance appraisal up to 30<sup>th</sup> September of every year, but nothing could be done, therefore, the Petitioner cannot be saddled with refusal of promotion in next rank.

We posted another question to him as to whether he has assailed the aforesaid supersession by the Selection Board at the appellate forum. He replied that the Petitioner moved various representations to the competent authority for decision and referred to the representation dated 03.03.2015 [available at Page-205 of the Memo of Petition] and argued that the aforesaid representation has not yet been decided by the Respondent-PTV,

however, he conceded that if the directions may be issued to the Respondent-PTV to decide the representation of the Petitioner, he will be satisfied. Be that as it may.

We asked from the learned counsel, representing Respondent-PTV whether the Respondents have decided the representation of the Petitioner? Mr. Muhammad Asghar Malik, learned counsel for the Respondents has replied in negative, however, he raised the issue of maintainability of the captioned Petition and contended that the Respondents have acted in accordance with law, Rules and Regulations of the Corporation as such they have not violated any fundamental right of the Petitioner. He prayed for dismissal of the instant petition, since in his view the petitioner has approached the Court with unclean hands.

Mr. Muhammad Nishat Warsi, learned DAG has supported the stance of the learned counsel representing Respondent-PTV.

We have heard the learned counsel for the parties and have perused the entire material available on record.

In the first place, we would like to examine the issue of maintainability of the captioned Petition under Article 199 of the Constitution.

The Pakistan Television Corporation Limited (PTVC) is not a Statutory Corporation but incorporated as a Public Limited Company registered under Companies Act 1913, and its own Service Rules namely Pakistan Television Corporation Limited Service Rules 1978, published in the Gazette of Pakistan (Extraordinary) on May 25, 1978, it has consistently been followed as a policy since 1977- 78. Pakistan Television Corporation though incorporated as a limited Company yet the Government having controlling shares in it from its inception and it being fully controlled and run by the Government also a Public Service Corporation, hence, perform functions in connection with the affairs of the Federation, a Province, or a Local Authority Functions of the Corporations in nature of the duties required to be

performed as 'public services' functioning under control of the Government and not merely powers without any corresponding obligations. It is the Government, which appoints the General Manager or the Managing Director, respectively, of the Corporation and their salaries is paid from public exchequer as such, this Court has the jurisdiction to entertain the Writ Petition under its Constitutional jurisdiction.

Having decided the issue of maintainability of the instant Petition, at the first instance, we deem it appropriate to direct the Competent Authority of Respondent-PTV for appropriate decision on the representation of the Petitioner dated 03.03.2015 in accordance with law, within a period of one [01] month, from the date of receipt of the Order of this Court. Let a copy of this order be communicated to the Respondents No.2&3 for information and compliance within a stipulated time.

To come up after one month.

**JUDGE**

**JUDGE**